Reserved on - 05.06.2026
Delivered on - 19.06.2026

HIGH COURT OF UTTARAKHAND AT NAINITAL

Appeal from Order No. 224 of 2023

1. Gurbachan Singh S/o Mohan Singh
   R/o Baghora, Tehsil – Sitarganj
   District – Udham Singh Nagar
2. Harjinder Kaur W/o Gurbachan Singh
   R/o Baghora Tehsil – Sitarganj
   District – Udham Singh Nagar

.....Appellants

Versus

1. Ministry of Road Transport and National Highways
   through Project Director National Highways Authority
   of India, Project Implementation Unit/PIU Rudrapur,
   3rd Floor Guru Angad Dev Shopping Complex,
   Rudrapur, District Udham Singh Nagar
2. Competent Authority/Special Land Acquisition Officer,
   District Udham Singh Nagar

.....Respondents

Present:-
Mr. Gurbachan Singh, appellant no. 1 in person.
Mr. Narain Dutt, Standing Counsel for the State of Uttarakhand.
Mr. Naresh Pant, Advocate with Mr. Raunak Pant, Advocate for the respondent no. 1.

Appeal from Order No. 307 of 2023

National Highway Authority of India,
Through its Project Director,
Project Implementation Unit/PIU Rudrapur,
3rd Floor Guru Angad Dev Shopping Complex,
Rudrapur, District Udham Singh Nagar

.....Appellant

Versus

1. Gurbachan Singh S/o Late Shri Mohan Singh
2. Harjinder Kaur W/o Shri Gurbachan Singh
   Both R/o Village – Baghora, Tehsil – Sitarganj,
   District Udham Singh Nagar
3. Competent Authority/Special Land Acquisition Officer,
   District Udham Singh Nagar

.....Respondents

Present:-
Mr. Naresh Pant, Advocate with Mr. Raunak Pant, Advocate for the appellant.
Mr. Narain Dutt, Standing Counsel for the State of Uttarakhand.
Mr. Gurbachan Singh, respondent no. 1 in person.

JUDGMENT

Hon'ble Ravindra Maithani, J.

Since common question of law and facts are involved in all these appeals, they are heard together and decided by this common judgment. However, for sake of convenience, facts would be referred from AO No. 224 of 2023 and parties shall be referred to accordingly, unless otherwise specifically specified.

2. Appellants Gurbanchan Singh and Harjinder Kaur claimed ownership over land at Khasra No. 43 area 0.1349 Hect., Khasra No. 44 area 0.0293 Hect., Khasra No. 49 area 0.1373 Hect. and Khasra No. 50 area 0.1914 Hect., total 0.4929 Hect. ("the land"), which was acquired by the respondent National Highway Authority of India ("NHAI") vide Notifications under Section 3-A of the National Highways Act, 1956 ("the NH Act, 1956") and under Section 3-D of the NH Act, 1956 dated 19.03.2014 for construction

of NH 125 and Truck By Lane/Truck Parking. The land is situated in Sitarganj-Khatima road, near Sitarganj town in District Udham Singh Nagar, Uttarakhand. The Special Land Acquisition Officer ("SLAO"), by its Award dated 26.08.2015 fixed the compensation under Section 3-G of the NH Act, 1956 @ Rs. 38,00,000/- per hectare. This was done by noticing that the land is agricultural land and a report of Tehsildar concerned was also taken into consideration. Aggrieved by it, the appellants filed an application under Section 3-G(5) of the NH Act, 1956. Accordingly, the Arbitrator in Application No. 51-72 of the year 2016-17, Gurbachan Singh and another v. Ministry of Road Transport and National Highways and another, by its Award dated 17.03.2017 enhanced the compensation to Rs. 11,000/- per sq. mtr. Both the appellants and the respondent NHAI filed applications under Section 34 of the Arbitration and Conciliation Act, 1996 ("the AC Act, 1996") challenging the award dated 17.03.2017 of the Arbitral Tribunal ("AT") passed in the Arbitration Case No. 51-72 of the year 2016-17. The application filed by the appellants was registered as Arbitration Suit No. 28 of 2017, Gurbachan Singh and another v. Ministry of Road Transport and National Highway and another, in the court of District Judge, Udham Singh Nagar, Rudapur, which was dismissed on 30.05.2023. The application filed by the respondent NHAI under Section 34 of the AC Act, 1996 was registered as Arbitration Suit No. 46 of 2017, Union of India v. Gurbachan Singh and others, in the court of District Judge, Udham Singh Nagar and it was also dismissed on 30.05.2023. Both the appellants and the respondent NHAI preferred separate appeals under Section 37(1) (c) of the AC Act, 1996, which have been registered as AO No. 224 of

2023 and AO No. 307 of 2023, respectively. They are being decided by this common judgment.

3. Heard the appellant Gurbachan Singh in-person and learned counsel for the NHAI.

4. Before proceeding further, it may be apt to record in a little more detail as to how the AT arrived at the compensation @ Rs. 11,000/- per sq. mtr. by its Award dated 17.03.2017. In arbitral proceedings, the AT framed four issues, they are as follows:-

> "(i) Whether the applicants are entitled to get the market value of the land acquired in the year 2013 on the basis of the rates for acquisition of adjoining land in the year 2008 with 10% -15% annual increment?
>
> (ii) Whether the applicants are entitled to get the market value of the land acquired in the year 2013 as per the circle rate of Rs. 11000/- per sq. mtr. prevalent on the date of notification for acquisition issued on 09.08.2013?
>
> (iii) Whether the applicants are entitled to get the market value of the land acquired in the year 2013 as per the sale deeds executed in the year 2013?
>
> (iv) To what relief the applicants are entitled to?"

5. On issue No. 1, the AT took note of some land acquired in the same village in the year 2008 by the Power Grid Corporation, which had attained finality. The AT increased that rate @ 10-15% per year and on issue no. 1, held that the market rate of the appellants' land is Rs. 12,000/- per sq. mtr., to which they are entitled.

6. On issue no. 2, the AT though took note of various commercial potentiality of land and recorded that the commercial potential is a factor for determining the market value of a land. But, finally decided that the compensation is to be awarded based on the circle rate of the land, as notified on 31.02.2012. The circle rate for the land in question was Rs. 11,000/- per sq. mtr. Accordingly, the AT held that the market rate of the land in question as per circle rate of 31.03.2012 is Rs. 11,000/- per sq. mtr. to which the appellants are entitled.

7. On issue no. 3, which is with regard to sale deeds parity, the AT held that in the year 2008, the land adjacent to the National Highway was sold @ Rs. 7,200/- per sq. mtr. and in the year 2013, similar type of land was sold @ Rs. 14,000/- per sq. mtr. and sale deeds were executed accordingly. Therefore, the AT held that the appellants are entitled to get the compensation of the land acquired @ Rs. 13,000/- per sq. mtr.

8. Finally, on issue no. 4, the AT decided that the appellants are entitled to compensation @ Rs. 11,000/- per sq. mtr.

9. The appellant no. 1 Gurbachan Singh appeared in person. He would submit that the AT framed four issues in the arbitration proceedings and recorded findings on issue nos. 1, 2 and 3 entitling the appellants to compensation @ Rs.12,000/- per sq. mtr., Rs. 11,000/- per sq. mtr. and Rs. 13,000/- per sq. mtr. under these three issues respectively, but, it is argued that the AT had awarded compensation @ Rs. 11,000/- per sq. mtr., whereas as per AT only, the appellants are entitled to compensation @ Rs. 13,000/- per sq. mtr., as held under issue no. 3 by the AT. Therefore, it is argued that the appellants should have been granted compensation @ Rs. 13,000/- per sq. mtr.

10. It is a question of modification of the Award. Is it permissible? The appellant no. 1 Gurbachan Singh very fairly admits that post the judgment of the Hon'ble Supreme Court in the case of Project Director, National Highway No. 45 E and 220 National Highways Authority of India v. M. Hakeem and another, (2021) 9 SCC 1, which has been reiterated in the case of Gayatri Balasamy v. ISG Novasoft Technologies Limited, (2025) 7 SCC 1, since award cannot be modified, it cannot be interfered with by this Court. This is the argument, which has been made by the appellants in AO No. 224 of 2023.

11. Before proceeding further, it may be seen as to what has been held in the case of M. Hakeem (*supra*) by the Hon'ble Supreme Court. In the case of M. Hakeem (*supra*), the Hon'ble Supreme Court discussed the jurisdiction of the courts under

Sections 34 and 37 of the AC Act, 1996 to modify an award and held that an award cannot be modified. In para 41, the Hon'ble Supreme Court observed as follows:-

> **"41.** As has been pointed out by us hereinabove, *McDermott* [*McDermott International Inc.* v. *Burn Standard Co. Ltd.*, (2006) 11 SCC 181] has been followed by this Court in *Kinnari Mullick* [*Kinnari Mullick* v. *Ghanshyam Das Damani*, (2018) 11 SCC 328 : (2018) 5 SCC (Civ) 106] . Also, in *Dakshin Haryana Bijli Vitran Nigam Ltd.* v. *Navigant Technologies (P) Ltd.* [*Dakshin Haryana Bijli Vitran Nigam Ltd.* v. *Navigant Technologies (P) Ltd.*, (2021) 7 SCC 657] , a recent judgment of this Court also followed *McDermott* [*McDermott International Inc.* v. *Burn Standard Co. Ltd.*, (2006) 11 SCC 181] stating that there is no power to modify an arbitral award under Section 34 as follows : (*Dakshin Haryana Bijli Vitran Nigam case* [*Dakshin Haryana Bijli Vitran Nigam Ltd.* v. *Navigant Technologies (P) Ltd.*, (2021) 7 SCC 657] , SCC p. 676, para 44)
>
> > "*44*. In law, where the court sets aside the award passed by the majority members of the Tribunal, the underlying disputes would require to be decided afresh in an appropriate proceeding. Under Section 34 of the Arbitration Act, the court may either dismiss the objections filed, and uphold the award, or set aside the award if the grounds contained in sub-sections (2) and (2-A) are made out. There is no power to modify an arbitral award."

12. When the issue was subsequently referred to the Larger Bench, in the case of Gayatri Balasamy (*supra*), the Hon'ble Supreme Court discussed this provision. In fact, one of the arguments that was made was that modification of arbitral awards may be permitted under the NH Act, 1956. But, this was also not accepted by the Hon'ble Supreme Court. In para 71 of its judgment in the case of Gayatri Balasamy *(supra),* the Hon'ble Supreme Court observed as follows:-

> "**71.** It has been argued that Section 34 should be expansively interpreted to permit modification of awards under the NHAI Act. In particular, it is suggested that courts should be allowed to modify the quantum of compensation awarded, as the Act involves statutory arbitration. This argument is, however, untenable. The jurisdiction conferred under Section 34 does not distinguish between statutory and non-statutory arbitration in terms of the scope of courts' power of review. Hence, this argument stands rejected."

13. The conclusions have been recorded by the Hon'ble Supreme Court in para 87 of the judgment in the case of Gayatri Balasamy (*supra*), which is as follows:-

> ***"Conclusions***
>
> **87.** Accordingly, the questions of law referred to by *Gayatri Balasamy* [*Gayatri Balasamy* v. *ISG Novasoft Technologies Ltd.*, 2024 SCC OnLine SC 1681] are answered by stating that the Court has a limited power under Sections 34 and 37 of the 1996 Act to modify the arbitral award. This limited power may be exercised under the following circumstances:
>
> **87.1.** When the award is severable, by severing the "invalid" portion from the "valid" portion of the award, as held in **Part II** of our **Analysis**;
>
> **87.2.** By correcting any clerical, computational or typographical errors which appear erroneous on the face of the record, as held in **Parts IV** and **V** of our **Analysis**;
>
> **87.3.** Post-award interest may be modified in some circumstances as held in **Part IX** of our **Analysis**; and/or
>
> **87.4.** Article 142 of the Constitution applies, albeit, the power must be exercised with great care and caution and within the limits of the constitutional power as outlined in **Part XII** of our **Analysis**."

14. It is true that the AT has recorded the entitlement for the compensation of the appellants at different rates. As stated, on issue No. 1, it was Rs. 12,000/- per sq. mtr., on issue no. 2, it was Rs. 11,000/- per sq. mtr. and on issue no. 3, it was Rs. 13,000/- per sq. mtr. The AT has held that the appellants are entitled to

compensation at these rates. But, how the highest rate is not given? There is nothing recorded in the award of the AT.

15. In fact, what is required to be seen now is as to whether the compensation that has been awarded by AT is in accordance with law or as to whether the court below has rightly rejected the applications under Section 34 of the AC Act, 1996 filed by the appellants and the respondent. In essence, it has to be seen as to whether in a proceeding under Section 37 of the AC Act, 1996, any interference is warranted? As stated, it is argued by the appellant No. 1 Gurbachan Singh in AO No. 224 of 2023 that if the award cannot be modified, it may not be touched upon.

16. Learned counsel for the NHAI very strenuously argued that the award is not in accordance with law; it is bad and the application filed by the respondent under Section 34 of the AC Act, 1996 has been wrongly dismissed, hence an interference is required to set it aside.

17. How to determine the compensation under the NH Act, 1956? The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ("the 2013 Act") makes provisions for compensation, etc. when a land is acquired. Admittedly, Section 26 & Section 28 of the 2013 Act are applicable while determining compensation under the NH Act, 1956, as held in the case of National Highways Authority of India v. P. Nagaraju *alias* Cheluvaiah and another, (2022) 15 SCC 1.

18. Section 26 (1) and Section 28 of the 2013 Act read as under:-

> "**26. Determination of market value of land by Collector**.–(1) The Collector shall adopt the following criteria in assessing and determining the market value of the land, namely:—
>
> (a) the market value, if any, specified in the Indian Stamp Act, 1899 (2 of 1899) for the registration of sale deeds or agreements to sell, as the case may be, in the area, where the land is situated; or
>
> (b) the average sale price for similar type of land situated in the nearest village or nearest vicinity area; or
>
> (c) consented amount of compensation as agreed upon under sub-section (2) of section 2 in case of acquisition of lands for private companies or for public private partnership projects,
>
> whichever is higher:
>
> Provided that the date for determination of market value shall be the date on which the notification has been issued under section 11.
>
> *Explanation 1*.—The average sale price referred to in clause (b) shall be determined taking into account the sale deeds or the agreements to sell registered for similar type of area in the near village or near vicinity area during immediately preceding three years of the year in which such acquisition of land is proposed to be made.
>
> *Explanation 2*.—For determining the average sale price referred to in *Explanation 1*, one-half of the total number of sale deeds or the agreements to sell in which the highest sale price has been mentioned shall be taken into account.
>
> *Explanation 3*.—While determining the market value under this section and the average sale price referred to in *Explanation 1* or *Explanation 2*, any price paid as compensation for land acquired under the provisions of this Act on an earlier occasion in the district shall not be taken into consideration.
>
> *Explanation 4*.—While determining the market value under this section and the average sale price referred to in *Explanation 1* or *Explanation 2*, any price paid, which in the opinion of the Collector is not indicative of actual prevailing market value may be discounted for the purposes of calculating market value.

> 28. **Parameters to be considered by Collector in determination of award**.–In determining the amount of compensation to be awarded for land acquired under this Act, the Collector shall take into consideration—
>
> *firstly*, the market value as determined under section 26 and the award amount in accordance with the First and Second Schedules;
>
> *secondly*, the damage sustained by the person interested, by reason of the taking of any standing crops and trees which may be on the land at the time of the Collector's taking possession thereof;
>
> *thirdly*, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;
>
> *fourthly*, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;
>
> *fifthly*, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change;
>
> *sixthly*, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under section 19 and the time of the Collector's taking possession of the land; and
>
> *seventhly*, any other ground which may be in the interest of equity, justice and beneficial to the affected families."

19. Learned counsel for the NHAI submits that in the instant matter, the compensation has not been determined in accordance with Section 26 and 28 of the 2013 Act, which is patent illegality, which is the basis for setting aside the award. In support of his contention, learned counsel has placed reliance on the principle of law as laid down by this Court in AO No. 253 of 2022, National Highway Authority of India v. Balkar Singh and others.

Learned counsel has also relied on the principles of law as laid down by the Hon'ble Supreme Court in the cases of P. Nagaraju (*supra*), Associate Builders v. Delhi Development Authority, (2015) 3 SCC 49, State of Chhattisgarh v. Sal Udyog (P) Ltd., (2022) 2 SCC 275, Delhi Airport Metro Express Private Limited v. Delhi Metro Rail Corporation Limited, (2022) 1 SCC 131 and Delhi Airport Metro Express Private Limited v. Delhi Metro Rail Corporation (2022) 9 SCC 286.

20. In the case of Balkar Singh (*supra*), a Coordinate Bench of this Court has held that the Arbitrator has to take into consideration the provisions of Section 26 and 28 of the 2013 Act while determining the compensation and if it is not done, the award becomes unsustainable. In this case only, this Court has held that it also amounts to patent illegality.

21. In the case of P. Nagaraju (*supra*), the Hon'ble Supreme Court discussed the aspect of patent illegality and permissibility of interferences. In paras 39 and 40 of the judgment, the Hon'ble Supreme Court observed as follows:-

> **"39.** Permissibility of interference is on specific grounds of, (*i*) arbitrator not adopting judicial approach, (*ii*) breach of principles of natural justice, (*iii*) contravention of statute not linked to public policy or public interest, as being patent illegality under Section 34(2-A) and (*iv*) most basic notions of justice.
>
> **40.** The decision in *Delhi Airport Metro Express (P) Ltd.* v. *DMRC* [*Delhi Airport Metro Express (P) Ltd.* v. *DMRC*, (2022) 1 SCC 131 : (2022) 1 SCC (Civ) 330] is relied upon to indicate that there should be minimal interference in arbitral awards, save, it suffers from patent illegality. What is patent illegality is delineated in para 29 which is as hereunder : (SCC p. 150)

> "*29*. Patent illegality should be illegality which goes to the root of the matter. In other words, every error of law committed by the Arbitral Tribunal would not fall within the expression "patent illegality". Likewise, erroneous application of law cannot be categorised as patent illegality. In addition, contravention of law not linked to public policy or public interest is beyond the scope of the expression "patent illegality". What is prohibited is for courts to reappreciate evidence to conclude that the award suffers from patent illegality appearing on the face of the award, as courts do not sit in appeal against the arbitral award. The permissible grounds for interference with a domestic award under Section 34(2-A) on the ground of patent illegality is when the arbitrator takes a view which is not even a possible one, or interprets a clause in the contract in such a manner which no fair-minded or reasonable person would, or if the arbitrator commits an error of jurisdiction by wandering outside the contract and dealing with matters not allotted to them. An arbitral award stating no reasons for its findings would make itself susceptible to challenge on this account. The conclusions of the arbitrator which are based on no evidence or have been arrived at by ignoring vital evidence are perverse and can be set aside on the ground of patent illegality. Also, consideration of documents which are not supplied to the other party is a facet of perversity falling within the expression "patent illegality"."

22. In the case of Associate Builders (*supra*) also, the question of patent illegality and the ground for making an interference was discussed by the Hon'ble Supreme Court and in para 40 of the judgment, the Hon'ble Supreme Court while discussing the English law held that if an award is induced by fraud or corruption, such award is in conflict with the public policy of India, which was the earliest ground on which the Courts of England set aside the awards. Thereafter, the Hon'ble Supreme Court observed that "**Added to this ground (in 1802) is the ground that an arbitral award would be set aside if there were**

an error of law by the arbitrator." In para 42 of the judgment in the case of Associate Builders (*supra*), the Hon'ble Supreme Court categorically put them under three sub-heads as below:-

> **"42.** In the 1996 Act, this principle is substituted by the "patent illegality" principle which, in turn, contains three subheads:
>
> **42.1.** (*a*) A contravention of the substantive law of India would result in the death knell of an arbitral award. This must be understood in the sense that such illegality must go to the root of the matter and cannot be of a trivial nature. This again is really a contravention of Section 28(1)(*a*) of the Act, which reads as under:
>
> "**28.*Rules applicable to substance of dispute***.—(1) Where the place of arbitration is situated in India—
>
> (*a*) in an arbitration other than an international commercial arbitration, the Arbitral Tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India;"
>
> **42.2.** (*b*) A contravention of the Arbitration Act itself would be regarded as a patent illegality — for example if an arbitrator gives no reasons for an award in contravention of Section 31(3) of the Act, such award will be liable to be set aside.
>
> **42.3.** (*c*) Equally, the third subhead of patent illegality is really a contravention of Section 28(3) of the Arbitration Act, which reads as under:
>
> "**28.*Rules applicable to substance of dispute***.—(1)-(2)***
>
> (3) In all cases, the Arbitral Tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction."
>
> This last contravention must be understood with a caveat. An Arbitral Tribunal must decide in accordance with the terms of the contract, but if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground. Construction of the terms of a contract is primarily for an arbitrator to decide unless the arbitrator construes the contract in such a way that it could be said to be something that no fair-minded or reasonable person could do."

23. In the case of Sal Udyog Private Limited (*supra*), the Hon'ble Supreme Court, *inter alia,* observed that "**failure on the part of the learned sole arbitrator to decide in accordance with the terms of the contract governing the parties, would certainly attract the "patent illegality ground"** (para 26)."

24. In the case of Delhi Airport Metro Express Private Limited (*supra*), the Hon'ble Supreme Court, *inter alia,* observed as hereunder:-

> "**29.** Patent illegality should be illegality which goes to the root of the matter. In other words, every error of law committed by the Arbitral Tribunal would not fall within the expression "patent illegality". Likewise, erroneous application of law cannot be categorised as patent illegality. In addition, contravention of law not linked to public policy or public interest is beyond the scope of the expression "patent illegality". What is prohibited is for Courts to reappreciate evidence to conclude that the award suffers from patent illegality appearing on the face of the award, as Courts do not sit in appeal against the arbitral award. The permissible grounds for interference with a domestic award under Section 34(2-A) on the ground of patent illegality is when the arbitrator takes a view which is not even a possible one, or interprets a clause in the contract in such a manner which no fair-minded or reasonable person would, or if the arbitrator commits an error of jurisdiction by wandering outside the contract and dealing with matters not allotted to them. An arbitral award stating no reasons for its findings would make itself susceptible to challenge on this account. The conclusions of the arbitrator which are based on no evidence or have been arrived at by ignoring vital evidence are perverse and can be set aside on the ground of patent illegality. Also, consideration of documents which are not supplied to the other party is a facet of perversity falling within the expression "patent illegality".".

25. In the case of Delhi Airport Metro Express Private Limited (supra), the Hon'ble Supreme Court in para 49 further observed as follows:-

> **"49.** Even assuming the view taken by the High Court is not incorrect, we are afraid that a possible view expressed by the Tribunal on construction of the terms of the Concession Agreement cannot be substituted by the High Court. This view is in line with the understanding of Section 28(3) of the 1996 Act as a ground for setting aside the arbitral award, as held in *Associate Builders* [*Associate Builders* v. *DDA*, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] and thereafter upheld in *Ssangyong* [*Ssangyong Engg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] . No case has been made out by the High Court to establish violation of Section 28(3). Having carefully examined the Concession Agreement, the findings recorded by the Tribunal and the findings recorded by the Division Bench, we are not in a position to hold that the opinion of the Tribunal on inclusion of Rs 611.95 crores under "equity" is a perverse view. It cannot be said that the Tribunal did not consider the evidence on record, especially the resolution dated 16-3-2011 passed by DAMEPL's Board of Directors. We also do not find fault with the approach of the Tribunal that the understanding of the term equity as per the Companies Act, 2013 is not relevant for the purposes of determining "adjusted equity" in light of the express definition of the term in the Concession Agreement. As has been held in *Ssangyong* [*Ssangyong Engg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] , mere contravention of substantive law as elucidated in *Associate Builders* [*Associate Builders* v. *DDA*, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] is no longer a ground available to set aside an arbitral award. The support placed by the Division Bench on the interpretation of Section 28(1)(*a*) of the 1996 Act as adopted in *Associate Builders* [*Associate Builders* v. *DDA*, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] is, therefore, no longer

> good law. In view of the foregoing, we set aside the findings of the High Court and uphold the award passed by the Tribunal in respect of the computation of termination payment under Clause 29.5.2."

26. In the case of Delhi Metro Rail Corporation (*supra*), the Hon'ble Supreme Court referred to the judgment in the case of Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 and observed in para 25 that "**No word in a statute has to be construed as surplusage. No word can be rendered ineffective or purposeless. Courts are required to carry out the legislative intent fully and completely. While construing a provision, full effect is to be given to the language used therein, giving reference to the context and other provisions of the statute**".

27. Learned counsel for the NHAI has also raised the following points in his submissions:-

(i) Under Section 26(1)(b) of the Act of 2013, average sale price for similar type of land situated in the nearest village or nearest vicinity was to be seen, which has not been done. Therefore, the award is bad for the reason of patent illegality.

(ii) The potentiality factor has nothing to do for determining market value of a land acquired under Section 26 of the 2013 Act, but, the award takes into consideration of the potentiality factor of the land; it vitiates the award as it is a patent illegality.

(iii) Under Section 26 of the 2013 Act, under sub-clauses 26(1)(a), (b) and (c), the value was to be determined and thereafter highest value was to be given to the beneficiary. But, in the instant case, the value that has been determined under different heads i.e. 26(1) (a), (b) and (c) is flawed. Hence, it is a patent illegality.

(iv) The land is agricultural land. Compensation could have been given only, which is fixed for the agricultural land and not otherwise.

28. In support of his contentions, learned counsel for the NHAI has placed reliance on the principles of law laid down in the cases of M/s Sunti Bunti Automobiles (P) Ltd. v. State of U.P. and others (Writ –C No. 53598 of 2009), Basti Ram v. Nagar Nigam, Ghaziabad and another, 1999 SCC OnLine All 1850, Smt. Urmila Devi v. Pooran Chand Dabar and others, 1998 SCC OnLIne All 659, Smt. Rekha Chaturvedi and another v. Chief Controlling Revenue & Another, (Writ –C No. 32962 of 2000), Hookiyar Singh and another v. Special Land Acquisition Officer, Moradabad and another, (1996) 3 SCC 766 and State of Karnataka and others v. Shankara Textiles Mills Ltd., (1995) 1 SCC 295.

29. In the case of M/s Sunti Bunti Automobiles (P) Ltd. (*supra*), arguments were raised that the nature of agricultural land cannot be changed unless and until there is a declaration under

Section 143 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 ("UPZA & LR Act"). It was, in fact, a case of registration of sale deed, where objections were raised with regard to the deficiency in the court fees, when the Collector held that the land was to be of urban potentiality and certain rate was notified. In that case, the Hon'ble Allahabad High Court, *inter alia,* held that "**as the market value of the land under transfer is required to be determined on the general principles, the nature of the land as to whether it is agriculture or residential looses all significance**".

30. In the case of Basti Ram (*supra*), the Hon'ble Allahabad High Court, in para 7, held that "**Mere existence of certain constructions over a Bhumidhari land would not take it out of purview of the provisions of U.P. Zamindari Abolition and Land Reforms Act unless a declaration is made under Section 143 of the said Act".** In the case of Smt. Urmila Devi (*supra*) and Smt. Rekha Chaturvedi (*supra*), similar principles have been reiterated.

31. In the case of Hookiyar Singh (*supra*), the Hon'ble Supreme Court considered the actual use of land for determining compensation.

32. In the case of Shankara Textiles Mills Ltd. (*supra*), the question was as to whether the land can be deemed to have been converted merely because it was used for non-agricultural purposes and in para 9 of the judgment, the Hon'ble Supreme Court answered this question and held that "**The consistent stand taken**

by the authorities is that the land was never converted for non-agricultural use as required by the provisions of Section 95(2) of the Revenue Act. The mere fact that at the relevant time, the land was not used for agricultural purpose or purposes subservient thereto as mentioned in Section 2(18) of the Act or that it was used for non-agricultural purpose, assuming it to be so, would not convert the agricultural land into a non-agricultural land for the purposes either of the Revenue Act or of the Act, viz. Karnataka Land Reforms Act".

33. Replying to the arguments made by the learned counsel for the respondent NHAI, the appellant Gurbachan Singh submitted that there is no illegality in the award. He would submit that the appellants are entitled to compensation at a higher rate, but since the award cannot be modified, the appellants are not claiming higher amount of compensation. He would submit that the scope of Section 37 of the AC Act, 1996 is much restrictive; appreciation of evidence cannot be done in the matter; there cannot be re-appreciation; if there are two views possible, this Court cannot substitute its own view to the view taken by the AT. He would also submit that even if there is no reason given in the award, the Court may read the reasons in the award as the Arbitrators are generally not legally trained minds. He would also submit that the respondent NHAI is trying to widen the scope of the appeal under Section 37 of the AC Act, 1996, which is not permissible.

34. This is admitted that in the instant case, compensation was to be determined in accordance with Sections 26 to 28 of the

2013 Act. Section 26 of the 2013 Act gives specific method to determine the market value.

35. It is also not in dispute that the scope in appeal under Section 37 of the AC Act, 1996 is quite restrictive. It is not a Court of Appeal. If there are two views possible, this Court should not substitute its own views to the views adopted by the AT. Re-appreciation of evidence cannot be done, unless the findings are perverse. Within those limited parameters, the matter is to be examined.

36. First and foremost, this Court proceeds to examine the findings of the AT on each issue, by which the compensation was determined. As noted hereinbefore, under three issues, the AT has given findings and held the appellants entitled for compensation at different rates.

37. Issue no. 1 is as follows:-

> "(i) Whether the applicants are entitled to get the market value of the land acquired in the year 2013 on the basis of the rates for acquisition of adjoining land in the year 2008 with 10% -15% annual increment?

38. The issue itself is not in accordance with Section 26 of the 2013 Act. Section 26 of the 2013 Act, as stated, give only three methods, which are as follows:-

> (i) the market value as per the Indian Stamp Act, 1899 (2 of 1899) for the registration of sale deeds.

(ii) the average sale price for similar type of land situated in the nearest village or nearest vicinity area; and

(iii) agreed rate.

39. The market value under Section 26 of the 2013 Act cannot be determined in a case based on the acquisition, which was done in the year 2008. In the instant case, the notification under Section 3-A of the NH Act, 1956 was made in the year 2013. Section 26 of the 2013 Act does not stipulate taking into consideration 5 years old rate determined in some acquisition proceedings. In fact, the rate determined in other acquisition proceedings is not a factor for determining the compensation under Section 26 of the 2013 Act. The AT on issue no. 1 held that the appellants are entitled to compensation @ Rs. 12,000/- per sq.mtr. This is not in accordance with the scheme of determining compensation under the NH Act, 1956, which is done in accordance with Sections 26 to 28 of the 2013 Act. Therefore, the appellants may not be entitled to compensation at the rate, which is determined by the AT under issue no. 1.

40. Issue No. 2 will be discussed after issue no. 3 is examined. Issue no. 3 is as follows:-

> "(iii) Whether the applicants are entitled to get the market value of the land acquired in the year 2013 as per the sale deed executed in the year 2013?"

41. According to the AT, as to whether the appellants are entitled to compensation based on sale deeds executed in the year 2013. It appears to have been framed as per the scheme of

determining the compensation under Section 26 of the 2013 Act. Under Section 26(1)(b) of the Act, one of the criteria for assessing and determining the market value of the land is the average sale price for similar type of land situated in the nearest village or nearest vicinity area. This is further explained in *Explanation 1* to Section 26 of the 2013 Act. At the cost of repetition, it is reproduced as below:-

> "**26. Determination of market value of land by Collector**.–(1) ....
> .....
>
> *Explanation 1*.—The average sale price referred to in clause (b) shall be determined taking into account the sale deeds or the agreements to sell registered for similar type of area in the near village or near vicinity area during immediately preceding three years of the year in which such acquisition of land is proposed to be made."

42. A bare reading of *Explanation-1,* makes it abundantly clear that when average sale price is taken, it should be taken of sale deeds executed immediately preceding three years of the year in which such acquisition of land is proposed to be made.

43. In the case of Project Director, National Highways Authorities of India v. Alfa Remidis Ltd. and others, 2026 SCC OnLine SC 845, the AT had determined compensation based on the sole sale deed of a different type of land, which was held to be impermissible and compensation at circle rate was awarded. In paras 11 and 12, the Hon'ble Supreme Court observed as follows:-

> **"11.** Applying the rigours of Section 26(1) of the 2013 LA Act to the case on hand, we find that the Arbitrator demonstrably erred in relying upon the sale deed dated 29.03.2017 relating to residential land in an adjoining village to determine the market value of respondent No. 1's

land, which was being used for an industrial purpose. Clearly, the two lands were not of a 'similar type' for the purposes of Section 26(1)(b) of the 2013 LA Act and the price in the said sale deed could not have been adopted. **Further, the methodology for working out the 'average sale price' under Section 26(1)(b), as set out in *Explanations* 1 to 4 thereunder, does not permit placing reliance on a single sale deed for that purpose. Reference** may be made to *Madhya Pradesh Road Development Corporation* v. *Vincent Daniel, (2025) 7 SCC 798*, wherein this Court considered the scheme of Section 26(1) of the 2013 LA Act and observed that the language used therein implied that there should be multiple deeds available for reference, as singular deals may not supply adequate and reliable data.

12. Though the High Court laboured over various decisions of this Court, the position obtaining under the statutory provision and the legal principles laid down in the above referred judgments were neither noted nor given effect to. Section 34(2A) of the Arbitration Act provides for setting aside an arbitral award if it is found to be vitiated by **patent illegality appearing on the face of it. Though the *proviso* thereto stipulates that an arbitral award should not be set aside merely on the ground of erroneous application of law or by reappreciation of evidence, we are of the opinion that the cloak of protection afforded by the *proviso* cannot be extended to the present arbitral award. The Arbitrator completely ignored the directives of Section 26(1)(b) of the 2013 LA Act and the *Explanations* thereunder,** by adopting a sale exemplar of a totally dissimilar type of land and, at that, a single sale exemplar, which was contrary to the statutory mandate. Respondent No. 1 had itself cited the Government rate available in the Ready Reckoner, i.e., Rs. 2,020/- per square meter, being the rate applicable for lands on the highway in Zone 4. Mauza Pardi (Rithi) finds mention amongst the villages named in Zone 4. That being so, the statutory provision that should have been applied for determination of the market value of respondent No. 1's land was Section 26(1)(a) of the 2013 LA Act."

(emphasis supplied)

44. Under issue no. 3, the AT had noted that in the year 2008 for acquisition of land adjacent to the national highway, sale deeds were executed @ Rs. 7,200/- per sq. mtr. and in the year 2013, sale deeds were executed between Rs. 12,000/- to Rs. 14,000/- per sq. mtr. But, as such exemplar sale deed has not been taken note of. This Court is cautious of the fact that it cannot re-appreciate the evidence and cannot sit as a court of appeal on the arbitral award. But, the Court is just examining as to how the AT reached to its conclusion? Is it as per the scheme of Section 26 of the 2013 Act?

45. It is evident that under issue no. 3, the AT did not follow the scheme of Section 26(1)(b) of the 2013 Act. Which sale deeds were considered? It is nowhere specified by the AT. What were the rates in those sale deeds? Sale deeds of preceding three years were to be taken into consideration, which has not been done. Therefore, the findings recorded by the AT on issue no. 3 are also not permissible. The fact remains that the appellants were not awarded compensation based on finding recorded by the AT on issue no. 3. Therefore, it has no effect.

46. The grave question is on issue no. 2. Issue no. 2 is with regard to determining the market value at circle rate. Here, multiple arguments were made on behalf of the respondent NHAI to argue that the findings of the AT on the issue no. 2 are not lawful. The first and foremost argument was that the land in question was agricultural land; it cannot be awarded compensation at

commercial rate; it is bad and it is a patent illegality. Arguments made on that aspect have already been noted hereinbefore.

47. There is another argument, which was made on behalf of the respondent NHAI questioning the determination of circle rate by the Collector. Learned counsel for the respondent NHAI has raised the following points on this aspect:-

(i) No proper finding/reasoning was noted in the award as to why the circle rate dated 31.03.2012 was made applicable?

(ii) Section 26(1)(a) of the 2013 Act cannot be read in isolation.

(iii) It is argued that under the Indian Stamp Act, 1899 ("the Stamp Act"), the Collector determines market value of the land, which is relatable to the agricultural and non-agricultural land. Therefore, there is no scope for making valuation of land on the basis of commercial potentiality of land.

(iv) Circle rate will not be applicable in the case and the provisions of the Stamp Act and its Rules shall prevail.

(v) The SLAO in its order dated 26.08.2015 has noted that the land is in the rural area and accordingly the compensation was determined. But, the Arbitrator has not distinguished it as to why compensation at circle rate is given?

48. The AT has taken note of many other acquired lands for discussion on the issue no. 2. The potentiality of land was also considered, but finally, the AT took note of the Order dated 31.03.2012 by which the circle rates of the land were notified and based on the circle rate, compensation was determined @ Rs. 11,000/- per sq. mtr.

49. Essentially two arguments have been made, namely- (i) that the land is agricultural land and for it commercial land compensation may not be awarded and (ii) circle rate for agricultural land should be fixed as such without considering the potentiality factor of the land for commercial purposes.

50. Section 26 of the 2013 Act fixes criteria in assessing and determining the market value of the land and as per sub-section (1)(a) of Section 26, the assessment and determination shall be made on the basis of market value, if any, specified in the Stamp Act for registration of sale deeds or agreements to sell, as the case may be, in the area, where the land is situated.

51. Under the Stamp Act, the Uttar Pradesh Stamp (Valuation of Property) Rules, 1997 were framed, which appears to be applicable in the State of Uttarakhand and by order dated 31.03.2012, the Collector, Udham Singh Nagar determined the circle rate.

52. This Court is of the view that the officer or the authority determining the compensation under Section 3-G of the NH Act, 1956 cannot go beyond the fixation of circle rate by the Collector under the Stamp Act. The correctness of the rates fixed or determined by the Collector under the Stamp Act may not be questioned in a proceeding under Section 3-G of the NH Act, 1956 for determination of the compensation or in any further proceedings, including Section 34 or/and under Section 37 of the AC Act, 1996. Therefore, the arguments made on the validity and correctness of the circle rate fixed by the Collector have less merit for acceptance.

53. Arguments have also been made with regard to the nature of the land. Under UPZA & LR Act, the nature of land and its ramifications are different aspects and computation of compensation is something different. As stated, the determination of compensation is to be done under Sections 26 to 28 of the 2013 Act. Under Section 26(1)(a) of the 2013 Act, the circle rate is to be seen and under Section 26(1)(b) of the 2013 Act, the average sale price of similar type of land is to be seen. Therefore, under Section 26(1)(b) of the 2013 Act, agricultural use and non-agricultural use may be a criteria, but while determining compensation under Section 26(1)(a) of the 2013 Act, it cannot be said that the use of land is to be seen. Under sub-section 1(a) of Section 26 of the 2013 Act, the circle rate has to be seen. Whatever is determined, that has to be paid.

54. This Court may just examine as to whether circle rate has correctly been examined or not because some arguments have

been made on this aspect also on behalf of the respondent NHAI. It is argued that the SLAO in its award dated 26.08.2015 has noted the Tehsildar's report and found that the acquired land is 100 meters away from the national highway and accordingly determined the compensation based on the circle rate. This is not accepted by the AT. The AT has taken commercial rate in consideration.

55. As such the findings of the SLAO have not been set aside or discussed. But, then the law is well settled that the Arbitrators are not considered to be the legally trained minds. The reasonings may be implicit. Under issue no. 2, the AT has discussed various factors and finally took into consideration the circle rate determined by the Collector on 31.03.2012. Admittedly, the circle rates were part of the record in the AT. A pictorial map of the land acquired has also been filed in this appeal by the appellants, which is not denied by the respondent NHAI. It is admitted to the parties that the pictorial map was also part of the proceedings before the AT. This Court is further making it clear that this Court is not appreciating any evidence. The pictorial map shows that the land is adjacent to Sitarganj-Khatima road. The SLAO has recorded that the land is 100 meters beyond the national highway. This is, in fact, factually wrong because in Appeal No. 307 of 2023, the respondent NHAI has placed on record, as Annexure 6, the objections, which they filed in the application under Section 34 of the AC Act, 1996 and in para 16 of it, they have admitted that the land acquired was adjacent to the national highway. Admittedly, on Sitarganj-Khatima road, where the land of the appellants falls, the rate or commercial rate is Rs. 11,000/- per sq. mts. by the order

dated 31.03.2012 of the Collector and note 20 of it records that the commercial rate will be applicable to such land, which falls within 100 meters from the national highway.

56. That is how the AT has decided compensation. This Court does not see any reason to interfere. There is no patent illegality. The compensation has been determined in accordance with law settled on this aspect.

57. On issue nos. 1 and 3, the findings of the AT are not in accordance with law. Compensation according to findings on these issues have not been awarded. Since the computation of compensation on issue nos. 1 & 3 by the AT is not in accordance with the law, the appellants are not entitled to enhanced compensation. In the impugned judgment dated 30.05.2023 passed in Arbitration Suit No. 28 of 2017, Gurbachan Singh and another v. Union of India and others, under Section 34 of the AC Act, 1996 rightly interference has not been made. Accordingly, Appeal from Order No. 224 of 2023 deserves to be dismissed.

58. On issue no. 2, as decided by the AT, the findings are in accordance with law. In the impugned judgment dated 30.05.2023 passed in Arbitration Suit No. 46 of 2017, Union of India v. Gurbachan Singh and others, under Section 34 of the AC Act, 1996 rightly interference has not been made. Accordingly, the Appeal from Order No. 307 of 2023 also deserves to be dismissed.

59. The Appeal from Order No. 224 of 2023 is dismissed.

60. The Appeal from Order No. 307 of 2023 is also dismissed.

(Ravindra Maithani, J)
19.06.2026

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